CF0000060169

Cr. A 2549/98 (2) S.T. No. 538/96

185

APPEAL PRISONER

D B (Cri)

No. 69/98 Name बोजाराम

Father's Name पोदियाराम Resident ग्राम- बारंग पाटा, थाना- लोहंडीगुडा जशपुर (म.प्र.)

Age 28 वर्ष Sentenced to आजीवन कारावास on 1-7-98

Under Section 302 I.P.C. by सत्र न्यायालय जगदलपुर, बस्तर (म.प्र.)

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :-
2. Date of which copy received :- 1-7-98
3. Date on which appeal sent :- 10-7-98
4. Whether the prisoner wished to be represented or not :- Yes / No.

No. 69/98 Name बोजाराम पिता पोदियाराम

Continued in सेन्ट्रल Jail जगदलपुर

No. 938 /अपराध- 98 Dated 10-7-98

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर, बस्तर (म.प्र.) tegether with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
सेन्ट्रल जेल जगदलपुर

Su perintendent Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office. 28/7/98

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 18 dated 29.7.98

Forwarded to the सत्र न्यायाधीश महोदय, जगदलपुर

C. R. MAGISTRATE

Date of receipt in Applieate Court

XI-HC-78

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...C.R.A. No. 2549/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: - Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Dhirendra Mishra, JJ.

13-2-2007:-

Shri R.K. Jain, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

Perused PUD dated 16/1/2007 sent by the Superintendent, Central Jail, Jagdalpur mentioning therein that the accused is in detention since 1/7/98 and he has been convicted under Section 302 of the I.P.C. Looking to the detention period, it was decided to hear this appeal finally with the consent of learned counsel for the parties.

This appeal is directed against the judgment of conviction and order of sentence dated 1st July 1998 passed by the Sessions Judge, Bastar at Jagdalpur, in S.T. No.538/96 whereby learned Sessions Judge convicted the accused for commission of offence under Section 302 of the I.P.C. for committing murder of his wife and sentenced him to undergo imprisonment for life.

Case of the prosecution is that on 17-11-96 one Kayaram gave merg intimation (Ex.-P/11) in the Police Chowki Mardum to the effect that on 16-11-96 in the morning he went to reap paddy crop. When he was returning, he saw one dead body in the field near the forest and informed Sukdaram, Sukdaram informed Kotwar Sukaluram Patel, they went to see body. They saw that dead body of a female was lying there. Dehati

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Nalishi Ex.-P/12 was lodged by Lachchuram, father of the deceased on 17-11-96 in the same police out post mentioning therein that his daughter Dukar Bai (since deceased) was married to the accused 4-5 years back. After one year of the marriage, accused started quarrelling with Dukar Bai, as a result of which she came to his house. 4 days thereafter the accused came and took Dukar Bai with him. Thereafter, the accused assaulted Dukar Bai with axe on her head, therefore, Dukar Bai again came to his house. The accused came and attacked him also. The matter was reported and the accused was sent to jail. After release from the jail, the accused forcibly took Dukar Bai with him. They remained together for about 7-8 months. On 17-11-96, he came to know that the accused has committed murder of his daughter with axe and body is lying near village Ermur. On receiving information, he went on the spot and saw dead body. His younger son-in-law Panduram informed him that on 13/11/96 Wednesday both Bojaram and Dukar Bai went to the market. After returning from the market, they stayed in the house of Bandaram. On 14/11/96 at about 10-11 am they left for the field of village Marega. On 15/11/96 at about 12-1 p.m. accused Bojaram informed Bandaram that he has committed murder of his wife by assaulting with Tangia and body is lying near village Ermur, on which he said that you inform Lachchuram, father of Dukar Bai, and he left the place. Panduram also informed Lachchuram that the accused has committed murder of his daughter.

Receiving this Dehati Nalish, case was registered under Ex.-P/14. Investigating Officer left for scene of occurrence, after giving notice to the Panchas, prepared inquest Ex.-P/1 on the body of Dukar Bai. The body of Dukar Bai was sent for post mortem examination to the Primary Health Centre, Lohandiguda under Ex.-P/2 where Dr. Virendra Thakur conducted

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

post mortem on the body of Dukar Bai, prepared post mortem report Ex.-P/13 and opined that cause of death was haemorrhage and shock on account of skull injuries. Death was caused approximately within 3-4 days prior to autopsy, mode of death was homicidal. During police custody, the accused gave memorandum Ex.-P/9 regarding weapon of offence i.e. axe, in pursuance of that, axe was taken into possession under Ex.-P/5. Recovered articles were sent for chemical examination to the Forensic Science Laboratory, Raipur, from where report Ex.-P/10 was received.

After completion of the investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur, who in turn, committed the case to the Sessions Judge, Jagdalpur.

The prosecution in order to establish the charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against him in the prosecution evidence. Learned Sessions Judge after hearing arguments of counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard Shri R.K. Jain, counsel for the appellant and Shri U.N.S. Deo, Additional Public Prosecutor for the State/respondent, perused the record and judgment of the trial Court.

There is no direct or ocular evidence in this case in order to connect the accused with the crime in question. The whole case rests on circumstantial evidence i.e. motive and last seen together. As far as motive is concerned, in Dehati Nalishi (Ex.-P/12) given by Lachchuram, father of deceased Dukar Bai, it is mentioned that the accused used to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

beat Dukar Bai. Even once he assaulted her with axe, thereafter he assaulted him also. The matter was reported to the police in which the accused was sent to jail. When he was released from the jail, he again assaulted Dukar Bai and in this incident, she was murdered. But the prosecution has utterly failed to establish movtive. Lachchu has been examined as PW-7, in his whole evidence, he has nowhere said anything about motive of the accused in crime in question. He has not said anything about the facts mentioned in Dehati Nalishi Ex.-P/12. He has simply stated that Panduram came and informed him that the accused has committed murder of Dukar Bai and her body is lying near village Ermur. Thereafter, he along with his wife went and saw body. He gave report Ex.-P/12. In para-2 he has stated that he did not know how and why his daughter was murdered. The relations between accused and the deceased were good and they never quarreled. PW-8 Hirme Bai, wife of Lachchu and mother of the deceased, has stated that one Sukda came to their village and informed them that the accused has committed murder of their daughter. Body is lying near village Ermur. She along with her husband saw that injuries were present on the body of Dukar Bai. In cross-examination, she has stated that Sukda came to their house and informed that somebody has murdered Dukar Bai. In the first instance, she has not stated anything about motive that the accused used to beat Dukar Bai or in any manner he had motive to commit murder of his wife. Even Sukda who informed this witness has not been examined, therefore, there is nothing on record to show that the accused had motive to commit murder of his wife.

As far as last seen is concerned, star witness regarding last seen is PW-2 Bandaram, co-brother of the accused. He has stated that about 5-6

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

months before the day of his examination, the accused and the deceased stayed at his residence. In the morning, they went to reap crop of paddy to village Marga, on the same day the accused returned and stayed in the house of his co-brother Pandru. One day thereafter Peede Bai, wife of Pandru, came and informed him that on account of quarrel the accused has committed murder of his wife. In cross-examination, this witness has stated that the accused and his wife had not stayed at his residence, but they stayed at the residence of his son Dole. The house of Dole is separate. He is not aware whether the accused and his wife Dukar Bai (since deceased) used to quarrel or not. Peede Bai has been examined as PW-3, but she has turned hostile and has not supported the prosecution case. Panduram co-brother of the accused has been examined as PW-4. He has stated that his co-brother Thagi came and informed that the accused has committed murder of his wife with axe. He along with his wife went to village Ermur and saw that there was injury on the neck of the deceased. Thereafter, he informed Lachchuram. In cross-examination, he has stated that he has not seen the accused assaulting his wife. Villagers informed him that the accused has committed murder of his wife. Thagi has not been examined by the prosecution. In fact, the prosecution has not been able to bring on record any evidence to establish the fact that the accused and the deceased when she was alive were seen together just before the date of incident or they were seen nearby the place of occurrence. In the first instance, even if last seen theory is established, unless same is corroborated by other circumstantial evidence connecting the accused with crime in question, merely on the basis of last seen, the accused cannot be convicted because it has been considered to be a very weak type of evidence. Moreover, in this case,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

even the prosecution has not been able to establish last seen theory also. On the basis of last seen in order to connect the accused with the crime in question, the prosecution is required to establish that time between the crime and last seen must be so small that there should not be any possibility of commission of crime by third person and there must be proximity with crime and last seen. None of the circumstances has been established by the prosecution in this case in order to convict the accused under Section 302 of the I.P.C.. There is no legal evidence on record, as such finding of the trial Court is perverse.

It is unfortunate that the accused is in detention since 3-12-96 i.e. about 10 years without any legal evidence on record.

In the result, the appeal is allowed. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside and he is acquitted of the said charge. He be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Barve

P.T.O.